



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Ms. Georgia N. Crump
Lloyd, Gosselink, Fowler, Blevins
& Matthews, P.C.
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR96-1035

Dear Ms. Crump:

You ask this office to reconsider our decision in Open Records Letter No. 96-0737 (1996). Your request for reconsideration was assigned ID# 100103.

In Open Records Letter No. 96-0737 (1996), this office concluded that the City of Bridgeport (the "city") had failed to establish that litigation was reasonably anticipated and, therefore, could not rely on section 552.103(a) of the Government Code, the "litigation exception," as a basis for withholding certain information from required public disclosure.

The city was served with a petition by the requestor on May 15, 1996. Open Records Letter No. 96-0737 (1996) was issued on May 17, 1996. On May 20, 1996, you informed this office that a lawsuit had been filed and faxed to us a copy of the petition. Based on these changed circumstances, you now ask us to reconsider whether section 552.103(a) of the Government Code excepts the requested information from required public disclosure.

In Open Records Decision No. 638 (1996) at 4, this office stated, in pertinent part:

[I]f a suit is filed against a governmental body asserting section 552.103(a) on the basis of reasonably anticipated litigation while a request for an open records decision is pending in this office, the governmental body must inform this office of that suit as soon as possible.

Implicit in this statement is the acknowledgement that this office will consider the change of circumstances (i.e., that litigation is pending rather than reasonably anticipated), provided that (1) suit is filed while our decision is pending and (2) the governmental body supplies this office with the new information regarding the litigation in a timely manner. As we conclude that the city timely notified this office of the change in circumstances, we withdraw our decision in Open Records Letter No. 96-0737 (1996).

This office must still address whether the information is related to the pending litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ *ref'd n.r.e.*); Open Records Decision No. 551 (1990) at 4. Having reviewed the Petition, and having re-reviewed the information at issue, we conclude that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a) and, therefore, the city may withhold the requested information from the requestor at this time.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100103

Enclosures: Submitted documents

cc: Mr. Alan Thomas
Assistant General Manager
Tarrant County Water Control and Improvement District No. 1
800 East North Side Drive
Fort Worth, Texas 76102-1097
(w/o enclosures)